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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/533,463	03/23/2000	Howard Pfeffer	2585-001	9924

7590 04/17/2003

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VU, VIET DUY

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

2154

DATE MAILED: 04/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. <b>09/533,463</b>	Applicant(s) <b>Pfeffer et al</b>
	Examiner <b>Viet Vu</b>	Art Unit <b>2154</b>

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1)  Responsive to communication(s) filed on Jul 25, 2000 (IDS)  
 2a)  This action is FINAL.      2b)  This action is non-final.

- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

#### Disposition of Claims

- 4)  Claim(s) 1-31 is/are pending in the application.  
 4a) Of the above, claim(s) 9-11, 20-27, and 29-31 is/are withdrawn from consideration.  
 5)  Claim(s) \_\_\_\_\_ is/are allowed.  
 6)  Claim(s) 1-5, 7, 8, 12-16, 18, 19, and 28 is/are rejected.  
 7)  Claim(s) 6 and 17 is/are objected to.  
 8)  Claims 9-11, 20-27, and 29-31 are subject to restriction and/or election requirement.

#### Application Papers

- 9)  The specification is objected to by the Examiner.  
 10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
     If approved, corrected drawings are required in reply to this Office action.  
 12)  The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a)  All b)  Some\* c)  None of:  
     1.  Certified copies of the priority documents have been received.  
     2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \*See the attached detailed Office action for a list of the certified copies not received.  
 14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
     a)  The translation of the foreign language provisional application has been received.  
 15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                 | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). <u>3</u> | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

**Restriction:**

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-8, 12-19 and 28, drawn to remote access and network access regulation classified in class 709, subclass 219 and 225.
- II. Claims 9-11, 20-27 and 29-31, drawn to data caching and network resource allocation, classified in class 709, subclass 226.

The inventions are distinct, each from the other because of the following reasons: Inventions I and II are related as subcombinations usable together. The subcombinations are distinct from each other if they are shown to be separately usable together. In the instant case, the invention I has a separate utility such as discarding requests in response to overloaded condition of the server while the invention II utilizes data cache at the proxy server to reduce the server load.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

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2. During a telephone conversation with Mr. Pontius on April 14, 2003 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-8, 12-19 and 28. Affirmation of this election must be made by applicant in replying to this Office action. Claims 9-11, 20-27 and 29-31 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

**Art Rejections:**

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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5. Claims 1-5, 7-8, 12-16, 18-19 and 28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Dutta et al, U.S. pat. No. 6,546,423 in view of McDaniel, U.S. pat. No. 6,510,214.

Dutta discloses a system and method for moderating traffic load on network servers comprising:

- a) receiving an access request from a client at a proxy server (see col 5, lines 9-12),
- b) performing a dynamic load analysis at the proxy server using rules stored in a memory (col 5, lines 12-17),
- c) directing the request to an application server as a result of the load analysis (see col 5, lines 15-30).

Dutta does not explicitly teach discarding a new request in response to an overloaded condition at the application servers, e.g., mail servers. The use of such discarding rule is well known in the art as disclosed by McDaneil (see McDaneil's col 4, lines 1-19).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize such request-discarding rule in Dutta because it would have protected the application servers against the overloaded conditions.

It would have been further obvious to one skilled in the art to apply Dutta's invention to any type of application servers including email servers.

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Per claims 4 and 15, it would have been obvious to one skilled in the art to recognize that the server service can be resumed either by explicit signal from the server or after a predetermined period of time, timeout.

**Allowable Subject Matter:**

6. Claims 6 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**Conclusion:**

7. The references cited by the examiner on PTO-892 but not relied upon are considered pertinent to applicant's disclosure.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Viet Vu whose telephone number is (703) 305-9597. The examiner can normally be reached on Monday through Thursday from 8:00am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An, can be reached on (703) 305-9678.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600.



VIET D. VU  
PRIMARY EXAMINER

Art Unit 2154  
4/15/03